

**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA**

Kuntz, Riley S.,
Plaintiff, *pro se*

VS.

Department of Justice,
Washington, DC 20530
Defendant,

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) Civil Case No. _____

) COMPLAINT

Plaintiff, Riley S. Kuntz, *pro se* complains against Defendant as follows:

INTRODUCTION, JURISDICTION AND VENUE

1. Kuntz filed a request for his own background with the FBI to determine why the FBI consistently delayed a firearm purchase by Kuntz. Since Kuntz' previous FOIA complaint, against unlawful FBI action, was the first one in this district for 14 years, a friendly reminder of FOIA precedent is seemingly fitting. "the FOIA suit generally is to take precedence on the court's docket and is to be expedited on the calendar." *Renegotiation Bd. v. Bannercarft Clothing Co.*, 415 US 1, 13, 94 S.Ct. 1028 (Supreme Court 1974). Defendant unlawfully withheld responsive agency records, unlawfully denied expedition of the FOIA request and unlawfully delayed a lawful firearm sale.
2. Plaintiff is seeking relief of: injunctive relief regarding the release of records improperly withheld, compensatory damages and equitable relief to vindicate

deprivations of his rights to property and due process secured by the laws of the United States and numerous rulings on agency misconduct.

3. This action arises under: 5 U.S.C. § 552 (a)(4)(B), 5 U.S.C. § 552 (a)(6)(C)(i), 5 U.S.C. § 552 (a)(6)(E)(iii), 5 U.S.C. § 552 and §§ 701-706. This Court also has jurisdiction under 28 U.S.C. § 1331.

4. Venue is proper pursuant to 5 U.S.C. § 552 (a)(4)(B) and 28 U.S.C. § 1391 in the United States Court for the District of North Dakota, the judicial district wherein Plaintiff resides.

PARTIES

5. Plaintiff, Riley S. Kuntz, filed a request for the production of records from the Federal Bureau of Investigation (FBI) via the eFOIA portal dated 24 November, A.D. 2018.

6. The FBI is a component of the Department of Justice (DOJ).

7. Defendant, the DOJ, is a federal agency within the meaning of 5 U.S.C. § 552 (f)(1).

FACTS

8. Kuntz prepared and filed a citizen's criminal complaint naming numerous ND State public servants as Defendants for felonious misconduct and sent it certified mail to the DOJ's Kenneth A. Blanko on the 17th Day of September, A.D. 2017. The DOJ replied. Kuntz was unsatisfied with the selective complicity in criminal misconduct by the Nation's leading legal organization. Kuntz sent the same complaint to the FBI field office in Minnesota on the 15 May, A.D. 2018.

9. The DOJ has a specific branch designed to prosecute public corruption.
10. Americans have a legal duty to report felonious misconduct under 18 U.S.C. §4.
11. Kuntz attempted to purchase a firearm, the 10th of November, A.D. 2018.
12. The National Instant Criminal Background Check System (NCIS) placed a delay on the purchase.
13. Kuntz sought information on the reason for the delay.
14. Kuntz again attempted to purchase a firearm sometime in the third full week of December, A.D. 2018.
15. Kuntz was still on NCIS delay.
16. Americans who are placed on a NCIS delay are unable to *lawfully* purchase a firearm.
17. An option to resolve an extended delay is to visit: www.fbi.gov/checks.
18. Another option to resolve an extended delay is to visit: <https://www.edo.cjis.gov>.
19. FOIPA, at the FBI, is Freedom of Information Act and the Privacy Act combined.
20. Kuntz' request sought his criminal history and the contents of a governmental file maintained on Kuntz.
21. Kuntz sought to expedite the request.
22. The request to expedite was based on Kuntz' loss of due process rights.
23. The FBI received the request and provided a tracking number of: 1422794-000.
24. The FBI replied to Kuntz and forwarded Kuntz' request for a criminal history record to the CJIS.
25. The NCIS/FBI requires pre-payment of \$18 in order to process a criminal history request.

26. The NCIS/FBI requires the submission of a requestor's fingerprints prior to the processing of a criminal history request.
27. Kuntz submitted a FOIPA through the FBI eFOIA portal.
28. The FBI mentioned a watch list in their reply to Kuntz.
29. The FBI did not provide Kuntz any record(s).
30. The FBI denied Kuntz' request for expedition.
31. Kuntz sought an appeal of the FBI's denial of expedition.
32. The DOJ assigned said appeal a number of DOJ-AP-2019-001659.
33. Kuntz sought an appeal of Defendant' failure to provide Kuntz record(s).
34. The DOJ assigned said appeal a number of DOJ-AP-2019-001812.
35. The DOJ denied Kuntz' expedition appeal.
36. The DOJ concluded that since Kuntz was not "'facing grave punishment' in a pending criminal proceeding and that 'there is reason to believe that the information produced will aid in the individual's defense.'"
37. The DOJ based the expedition determination on a District Court ruling from the District of Columbia (D.C.)
38. The DOJ affirmed FBI denial of record production.
39. The DOJ based their decision on a District Court ruling from D.C.
40. Both DOJ denials included an invitation to initiate litigation.
41. In addition to Kuntz' exhaustion of administrative remedies, Kuntz contacted Tara Iverson, seeking her assistance in the production of responsive records in order to prevent burdensome litigation.
42. Tara Iverson is a local DOJ attorney who received sharp rebuke from retired

Honorable Magistrate Miller in case 1:17-cv-00223-CSM for her ridiculous attempts to deprive Kuntz of recourse for the same agency' misconduct.

43. To date, Kuntz has not received a record responsive to his request.

44. Kuntz has constructively exhausted all available administrative remedies.

45. The FBI and the DOJ would rather burden the Judicial system, than comply with a simple and harmless provision of law.

46. FOIA has no affirmative defenses.

47. No legitimate affirmative defenses exist regarding this Complaint.

COUNT I

Violation of FOIA: Unlawful Withholding of Agency Records

48. Paragraphs 1-47 above are hereby incorporated by reference as if set forth fully herein.

49. As described above, the FBI has failed to expedite Kuntz' request and failed to make responsive records available to Plaintiff.

50. As a result of FBI's unlawful delay, the agency has withheld responsive agency records from Plaintiff in violation of FOIA, 5 U.S.C. § 552(a)(3)(A).

51. Plaintiff has exhausted the applicable administrative remedies with respect to Plaintiff's Request 5 U.S.C. § 552(a)(6)(C)(i).

52. Plaintiff is entitled to injunctive relief compelling the release and disclosure of the requested agency records.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that this Court:

A. Order the FBI to promptly disclose to Plaintiff responsive agency records;

B. Order the FBI to file, within 20 days of the date of the Court's Order in this matter, a *Vaughn* index, and an affidavit: 1) identifying each document withheld from disclosure; 2) stating the FBI's claimed statutory exemption as to each withheld document (or portion of a document); and 3) explaining why each withheld document is exempt from disclosure;

C. Award Plaintiff his costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E);

D. Grant such other relief as the Court may deem just and proper.

ADMINISTRATIVE PROCEDURE ACT

53. Kuntz reserves the right to add additional briefing.

Article III Standing with Challenge to DOJ Order 556-73

54. The first element is defined as an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical. Defendant refuses to release Kuntz' own file to Kuntz, in violation of the FOIA and the Privacy Act. Kuntz has a legally protected interest, codified in the U.S.C. Chapter 5, §§552 and 552a. This interest is also actual or imminent, as Defendant fails to comply with these laws, under the guise of said DOJ order. Thus, Kuntz meets the first element.

55. The second element requires the plaintiff to show a sufficiently direct casual connection between the challenged agency action and the identified harm. In the present case, Kuntz shows a direct connection between DOJ Order 556-73 and the failure of the Defendant to provide responsive records to Kuntz. Thus, Kuntz meets the second element.

56. The third element is proof that a favorable resolution of a claim would likely redress the professed injury. Since the basis for agency misconduct is DOJ Order 556-73, when the Court overrules said order, it is clear that Kuntz will obtain a favorable resolution of his claim and redress the injury in fact. Thus, Kuntz meets the final element to Article III standing.

DOJ Order 556-73

57. DOJ Order 556-73 is; arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; unsupported by substantial evidence in a case subject to 5 U.S.C. 556.

58. DOJ order 556-73 requires fingerprints of a requester for a personal criminal history record maintained by the FBI, in addition to an \$18 fee. The FBI concludes that the only way possible to identify a requester is to require fingerprints. Once obtained, the fingerprints then stay in the FBI database of biometric services.

59. The IRS, on the other hand, for example, only requires: a SSN or ITIN, DOB and mailing address of the latest tax return. The foregoing, readily available information, is to obtain sensitive tax records of an individual. The IRS does not require fingerprints or an \$18 fee (www.irs.gov/individual/get-transcript). In fact, the IRS states on their website:

- a. “Enacted in 1966, the Freedom of Information Act, or FOIA, gives any person the right to access federal agency records or information. The FOIA is based on the presumption that the government and its information belong to the people.
- b. New law, like the Open Government Act, as well as new policies, such as

those issued under the President and the Attorney General, promote the spirit of transparency envisioned by our founding fathers.”(www.irs.gov/privacy-disclosure/irs-freedom-of-information)

60. The DoD, again, for example, only requires ‘certain minimum identifying data, such as full name, date and place of birth, or such other personal information necessary to locate the record sought and information that is ordinarily only known to the individual.’ If the information sought is ‘sensitive’, ‘additional identifying data may be required, e.g., an unsworn declaration under penalty of perjury, or notarized signatures are acceptable as a means of proving the identity of the individual.’ [310.17 (a)(2){sic 3})(iv)].

310.17(a)(2){sic 3} states: “Identity verification procedures shall not:

- (i) Be so complicated as to discourage unnecessarily individual from seeking access to information about themselves; or
- (ii) be required of an individual seeking access to records that normally would be available under the DoD Freedom of Information Act Program.” (See 32 CFR, part 286) (<https://dpcl.d.defense.gov/Privacy/About-the-Office/DoD-Federal-Privacy-Rule/Subpart-D>)

61. 5 U.S.C. 552a (d) Access to Records - each agency that maintains a system of records shall-

upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual’s record in the accompanying person’s presence; (emphasis added)

62. Petitioner concludes that other governmental agencies fully grasp the concept of transparency by providing a requester a copy of his personal information maintained by the agency. This is, of course, a requirement of every federal agency according to United States Code. Congress has spoken on the issue. On this basis, Kuntz requests the Court

enjoin Defendant to comply with the U.S.C. (FOIA and PA) and overrule DOJ order 556-73.

Article III Standing with Challenge to FBI Watch list Placement

63. The first element is defined as an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical. Kuntz complied with 18 U.S.C. §4, rather than becoming another accessory after the fact, and was placed on an FBI watch list. Kuntz has a legally protected interest secured by both the First, Fifth and Fourteenth Amendments to the U.S. Constitution, from being placed on a watch list for complying with U.S.C., or engaging in free speech. The threat is actual or imminent, based on agency misconduct. Kuntz will continue to provide citizen's criminal complaints against all felonious misconduct, irrespective of the consequences from a despotic federal agency. Thus, Kuntz meets the first element.

64. The second element requires the plaintiff to show a sufficiently direct casual connection between the challenged agency action and the identified harm. In the present case, Kuntz shows a sufficiently direct casual connection between providing a citizen's criminal complaint and placement on a government agency watch list. At the very least, Kuntz sufficiently shows a direct casual connection between engaging in free and protected speech, and/or complying with U.S.C. and being deprived or delayed of a *lawful* firearm purchase. Thus, Kuntz meets the second element.

65. The third element is proof that a favorable resolution of a claim would likely redress the professed injury. When the Court enjoins the Defendant from placing law-abiding Americans on a watch list for complying with Congressional mandate, Kuntz, and other good Americans, will no longer face continual deprivations of rights secured by

the First, Fifth and Fourteenth Amendments to the U.S. Constitution. Specifically, the right to free speech, the right to be left alone, and the right to due process and the right of due process from state agency action. It is clear that Kuntz will obtain a favorable resolution of his claim and redress the injury in fact. Thus, Kuntz meets the final element to Article III standing.

66. “Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known to some to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.” 18 U.S.C. §4.

Kuntz has an affirmative duty to pass his knowledge of felonious misconduct along to civil servants. Kuntz concludes there are no better agencies to inform of felonious misconduct other than the two tasked with enforcement and prosecution of the U. S. criminal code.

67. In addition to the foregoing legal requirement, “Congress shall make no law . . . abridging the freedom of speech”, First Amendment U.S. Constitution.

“They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.” *Whitney v. California*, 274 US 357, 375 (Justice Brandies concurring)

68. “No one shall be deprived of life, liberty, or property without due process of law.” Fifth Amendment U.S. Constitution. In this instance, Kuntz was deprived of liberty and property without due process of law. The extent of the loss of liberty is unknown due to agency secrecy.

I. It is reasonable to conclude that Kuntz might not have been able to utilize an airplane to travel. “The No Fly List is a small subset of the U.S. government Terrorist Screening Database that contains the identity information of known or suspected terrorists. This database is maintained by the FBI’s Terrorist Screening Center.” www.tsa.gov/travel/passenger-support/travel-redress-program.

II. While other losses are speculative, the loss of the ability to acquire property, whilst engaging in lawful activity protected by the Second Amendment to the U.S. Constitution, is concrete. This deprivation has no basis in law, and is contrary to the intent of the United States of America. Kuntz wasn’t even able to purchase a firearm to protect himself from the criminals the DOJ and FBI allow to continually wander the streets.

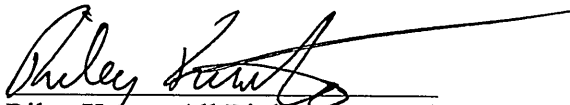
69. SCOTUS holds a general three-part test to determine the sufficiency of agency action. Upon review of challenged agency conduct, a consideration of the following three factors is required. “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, in any, of additional procedural safeguards; and finally, the Government’s interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335. Kuntz’ private interest is substantial. As pled, the risk of an erroneous deprivation is also substantial. The government, sans empty threats to national security and an all encompassing detriment to law enforcement investigatory process, has no substantiated cause for placing law-abiding Americans on any form of watch list. In sum, the private burden is high, while the government burden is minimal, for the Court to enjoin § 4

compliant individuals from facing additional surveillance.

70. The FBI allows the murder of Americans, despite information provided in an attempt to save lives. For instance, the shooting at Fort Hood, the shooting at the Pulse Nightclub in Orlando and the 2016 bombing at NYC. More blunders can be found at: <https://www.foxnews.com/story/big-blunders-plague-fbi>. The point to pointing to all of these blunders, is that the FBI makes poor choices in whom to let walk and whom lock up, doing so which is detrimentally affecting Americans, on American soil. The FBI wastes valuable resources chasing their own tails, or political dissidents from ND, thereby allowing actual terrorists free rein. The entirety of the FBI watch list program is nothing more than a modern witch-hunt. For these reasons, Kuntz seeks the Court's enjoinderment of Defendant's illegal watch list placement.

Dated this 15th Day of April, A.D. 2019

Respectfully submitted,



Riley Kuntz, All Rights Reserved
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